

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of Verizon for Forbearance From	)	CC Docket No. 96-149
The Prohibition Of Sharing Operating,	)	
Installation, and Maintenance Functions	)	
Under Section 53.203 (a)(2) of The	)	
Commissions Rules	)	

**COMMENTS OF SBC COMMUNICATIONS INC.  
IN SUPPORT OF VERIZON’S PETITION FOR FORBEARANCE**

SBC Communications Inc., on behalf of itself and its subsidiaries (collectively referred to as “SBC”), hereby respectfully submits its comments in support of Verizon’s Petition for Forbearance in the above-mentioned proceeding. Because the Commission’s regulation prohibiting BOCs and their § 272 affiliates from sharing operation, installation and maintenance functions imposes disproportionate costs on BOCs without any concomitant benefits to consumers, the Commission should forbear from applying this regulation to the BOCs.

**I. Background**

Section 272 of the Telecommunications Act of 1996 (Act) states, in relevant part, that a BOC may not provide originating interLATA telecommunications services except through a separate affiliate. It also requires, *inter alia*, that this § 272 affiliate operate independently of the BOC, maintain separate books and accounts, have separate officers, directors and employees, and conduct all transactions on an arms length basis.<sup>1</sup> This Commission has interpreted the “operate independently” requirement to further require that:

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<sup>1</sup> 47 U.S.C. § 272(b).

- (a) the BOC and its § 272 affiliate be precluded from jointly owning switching or transmission facilities or the land or buildings where those facilities are located;
- (b) a § 272 affiliate be precluded from performing operation, installation, and maintenance functions associated with the BOC's facilities; and
- (c) a BOC or any BOC affiliate, other than a § 272 affiliate itself, be precluded from performing operation, installation, or maintenance functions associated with the facilities that the § 272 affiliate owns or leases from a provider other than the BOC with which it is affiliated.<sup>2</sup>

The above restrictions are absolute; in other words, the BOC and its § 272 affiliate cannot perform these operation, installation, and maintenance (OI&M) functions for each other even if they offer to perform these services for other carriers in a nondiscriminatory manner.

As Verizon correctly notes in its petition, when the OI&M requirement stated in items (b) and (c) above was adopted in 1997 the Commission did not have the benefit of a cost benefit analysis of this restriction. Experience has shown that the OI&M restriction imposes a tremendous burden on the BOCs – with no concomitant benefit to consumers.

In terms of direct costs alone, this restriction imposes duplicative costs by requiring the BOC and its 272 affiliate to hire separate personnel for installation, provisioning, and maintenance work when the same work can be done by one set of personnel with the relevant skills. Similarly, it imposes duplicative costs for separate systems and network operations when existing BOC systems or existing networks could more efficiently be used to provide some of the interstate long distance services. SBC estimates that without these restrictions, in the Southwestern Bell (“SWBT”) region alone, its section 272 affiliate could save approximately 50 percent of its costs for personnel in the network engineering and network operations

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<sup>2</sup> *Implementation of the Non-Accounting Safeguards of §§ 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket No. 96-149, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 21905, at ¶¶ 162 and 163. (1996) (*Non-Accounting Safeguards Order*).

departments. Further, SBC's section 272 affiliate could achieve 40 percent savings from personnel employed for network testing and 20 percent for network administrative staff.<sup>3</sup>

More importantly, this requirement denies BOCs the ability to offer consumers a critical benefit of the Act: the provision of seamless end-to-end service. Thus, SBC cannot have one engineer design the entire circuit for a customer. Separate engineers design the local and interLATA long-distance portions of a circuit which, in the end, have to work together. Not only does this create unnecessary and wasteful expense; it also increases the customer's risk that the different portions of the network do not work together as they should.

Similarly, the BOC and the § 272 affiliate cannot effectively coordinate the installation of the networks. SBC is currently required to deploy separate installation crews for the same customer so that they can do the physical installation on different portions of the network. Not only does this result in varied appointments for the customer, but, once again, it increases the chances of error right at the beginning of the process.

This same problem carries through in the repair environment. Even if there is a simple problem in the network, the BOC's technician cannot clear it from the 272 affiliate's part of the network. Because of OI&M concerns, the BOC and the § 272 affiliate often must roll out two trucks for the same problem: one to clear the trouble from the BOC's side of the network and the other to do the corresponding activity on the long distance side of the network. If the customer is still having problems then the duplicative process begins again.

Further, and most frustrating, SBC's customer cannot receive end-to-end testing from either the BOC or the § 272 affiliate. Thus, if the customer calls in with a trouble report, the BOC cannot simply test across the network and determine the problem. Instead, it has to take the following steps: determine whose side of the network has the problem; if the problem is in the long distance network, send a trouble report to the 272 affiliate; give the affiliate time to

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<sup>3</sup> See SBC Comments, filed August 8, 2002, at 7, in Notice of Proposed Rulemaking, *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, 17 FCC Rcd 9916 (2002).

work out the problem; ask for status updates from the affiliate; and then inform the customer about the status. Any other provider today can take one trouble report, test the circuit across the network, and immediately inform the customer of the problem. Although SBC can do end-to-end testing today with other interexchange carriers like AT&T and Sprint to provide their long distance customers with seamless service, the § 272 restrictions prevent SBC from providing this service to its *own* customers.

These problems are further exacerbated in the relatively nascent broadband market. Broadband services are provided over platforms that integrate local and long distance voice and data services. As Verizon explained, “[t]he OI&M restriction requires the use of multiple work groups to deal with arbitrarily delineated demarcations between “local” and “long distance” portions of what is technologically, as well as in the minds of customers, a single integrated end-to-end service.”<sup>4</sup> This deployment of separate personnel and piece part work makes no sense in the broadband environment and simply hampers the BOCs provision of service in a new and emerging market – where dominant providers remain unhampered by similar restrictions.

Also, although these inefficiencies affect BOC service to all customers, they particularly affect service to large business customers with complex orders. It is the large business customers that require integrated end to end services that include voice, data, and other sophisticated products. And timeliness and quality of service are critical to meet their business needs. Customers hold SBC accountable for the inconsistencies that result from the regulatory restrictions and, over the years, SBC has experienced a loss of large business customers because of its inability to offer seamless end-to-end service. It has been SBC’s experience that even telecommunications customers that are pleased with its services overall and, all things being equal, would retain SBC’s services, have reluctantly taken their business to competitors less hampered by similar regulations.

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<sup>4</sup> See Verizon Petition For Forbearance, filed Aug. 5, 2002, at 5.

## **II. The Commission Should Forbear From Applying the OI&M Restriction to BOCs.**

Section 10 of the Act requires the Commission to forbear from applying any regulation or provision of the Act to telecommunications carriers if the Commission determines that:

(a) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(b) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(c) forbearance from applying such provision or regulation is consistent with the public interest.<sup>5</sup>

Regarding the public interest determination, § 10(b) states that: “[i]f the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.”<sup>6</sup> As demonstrated below, the Commission should forbear from enforcing the OI&M restriction because it meets all the conditions.

### **A. Enforcement of the OI&M Restriction is Not Necessary to Ensure that the BOCs Services Are Just and Reasonable And Are Not Unjustly or Unreasonably Discriminatory.**

The Commission imposed the OI&M restriction on BOCs mainly because it was concerned about its ability to monitor the allocation of costs between the BOCs and their § 272 affiliates.<sup>7</sup> However, while improper cost allocation may have been a concern in a traditional rate-of-return regulation regime, and to a lesser extent in price caps with sharing, this is no

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<sup>5</sup> 47 U.S.C. § 160(a).

<sup>6</sup> 47 U.S.C. § 160(b).

<sup>7</sup> *Non Accounting Safeguards Order* at ¶163.

longer an issue. In today's more competitive pure price caps environment, BOCs' local and access rates are capped, thereby denying them *any* ability to engage in cross subsidization.

Moreover, even assuming, *arguendo*, that there are continued concerns about cross subsidization, the Commission's detailed accounting and cost allocation rules, including affiliate transactions rules that govern transfers between affiliates, prevent any cost misallocation.<sup>8</sup> As Verizon correctly notes, there is no fundamental difference between cost allocations necessary to monitor the sharing of OI&M services and the cost allocations that the Commission already applies to administrative and other services that are currently shared between the BOC and the § 272 affiliate. As with other services, the § 272 affiliates will have to contract for OI&M services on an arms length basis, reduce them to writing, and make them available for public inspection. Further, the § 272 affiliates will continue to maintain separate books and be subject to audits under the Commission rules. Therefore, adequate safeguards already exist under the Commission's rules for shared services.

Further, the OI&M restrictions are not necessary to prevent unreasonable practices or unjust discrimination. As the Commission itself recognized in the *Non Accounting Safeguards Order*, the Act and the Commission's rules are filled with additional nonstructural safeguards that protect against discrimination and cross subsidization.<sup>9</sup> Most importantly, §§ 272(e)(1) and (3), which ensure parity of performance and access charge imputation, will continue to apply. And the nondiscrimination safeguards of §§ 201 and 202, combined with the interconnection obligations under § 251(c), and the Commission's rules on network disclosure ensure further protection for competitors. The Commission also has ample enforcement authority to protect against anti-competitive action. In addition to its enforcement authority under § 271(d), the

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<sup>8</sup> Although SBC has asked the Commission to relax its comprehensive accounting and reporting requirements, even these relaxed requirements would be effective in preventing cross-subsidization. See Joint Comments of BellSouth, SBC, Verizon, Qwest, Frontier, and CBT, filed April 8, 2002, in *Further Notice of Proposed Rulemaking* in CC Docket Nos. 00-199, 99-301 and 80-286, 16 FCC Rcd 19911 (2001).

<sup>9</sup> *Non-Accounting Safeguards Order*, at ¶271.

Commission may impose forfeitures and other sanctions pursuant to §§ 4(i), 503, and 206-209 of the Act.

**B. Enforcement of the OI&M Restriction Is Not Necessary to Protect Consumers.**

Nor is the OI&M restriction necessary to protect consumers. If anything, *elimination* of this restriction is necessary to protect consumers. As explained above, the OI&M restriction imposes unreasonable and wasteful costs on BOCs which are inherently passed along to consumers. Moreover, as Verizon explained, the costs of complying with the OI&M restriction divert capital from productive investments and the development of new services.<sup>10</sup> Most importantly, this results in detrimental service to consumers. Despite the best efforts of the BOCs, the lack of coordination and the number of hand-offs entailed in providing complex services, particularly to business customers, prevent BOCs from offering consumers the quality and timeliness of service they have come to expect.

**C. Forbearance From Applying the OI&M Restriction Is Consistent With Public Interest.**

For the foregoing reasons, forbearance from the OI&M restriction is consistent with the public interest. Indeed, forbearance will enhance competition for telecommunications services. The OI&M restriction denies BOCs the ability to integrate services – while leaving their competitors free to integrate local and long distance operations without any of the costs imposed on BOCs. As this Commission itself has recognized, integrated provision of services is more efficient than requiring companies to use separate personnel, provisioning, and databases.<sup>11</sup> The Commission has also recognized that its task is to implement section 272 without unfairly

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<sup>10</sup> See Verizon Petition For Forbearance at 10.

<sup>11</sup> *BellSouth Petition for Waiver of the Computer III Comparably Efficient Interconnection Requirements and Petition of the Verizon Telephone Companies for Waiver of Comparably Efficient Interconnection Requirements to Provide Reverse Directory Assistance*, CC Docket Nos. 01-288 and 02-17, *Memorandum Opinion and Order*, 17 FCC Rcd 13881, ¶12 (2002).

handicapping BOCs in their ability to compete.<sup>12</sup> Elimination of this restriction will remove the unfair inefficiencies imposed on the BOCs and free them up to compete more effectively in the market.

It will be particularly beneficial in the broadband market where the BOCs – the nondominant providers of service – are being held back from competing effectively with other telecommunications providers because of arbitrary demarcations between “local” and “long distance” that have no meaning in the new marketplace. By removing such artificial limitations and inefficiencies the Commission can spur investment in new technologies and growth of new and innovative services.

Moreover, forbearance from the OI&M restriction is in the public interest because it will allow BOCs to provide consumers with seamless end-to-end service without additional and unnecessary costs. This will ensure that consumers receive the convenient, high quality, and competitively priced services that they were promised under the Telecommunications Act.

### **III. Conclusion**

As Chairman Powell has stated:

If we don't have a clear and demonstrable justification of a rule, then the appropriate role of government is to take the rule away or not interfere in the otherwise proper functioning of a market, rather than leave a rule in for good measure. Over history a lot of rules that were left for good measure ... have secondary effects that often harm the welfare of consumers. ... I don't think you've got to prove to me that a rule is not necessary. I think I have to prove that it is necessary. And if I can't do that, I don't think that I should intervene.<sup>13</sup>

The Commission should heed these words and forbear from applying the OI&M restriction on the BOCs. The significant cost of this requirement is particularly burdensome in

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<sup>12</sup> *Non Accounting Safeguards Order* at ¶13.

<sup>13</sup> *Powell Defends Stance on Telecom Competition*, COMMUNICATIONS DAILY, May 22, 2001 at 2-3.

an economy that is mired in recession. Moreover, this requirement serves no purpose that cannot be met through other existing non-structural safeguards. The Commission should free BOCs of this redundant regulation so that they can better serve consumers and bring to the market more robust competition.

Respectfully Submitted,

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